



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

APR 30 2007

Honorable Lauren Larsen  
Acting Commissioner of Education  
Virgin Islands Department of Education  
44-46 Kongens Gade  
St. Thomas, U.S. Virgin Islands 00802

Honorable Lauren Larsen:

This is to inform you that we have conditionally approved Virgin Islands' Eligibility Documents, including assurances and certifications, for Federal Fiscal Year (FFY) 2006 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for conditional approval is based on our receipt of the State's application submitted by the Virgin Islands Department of Education (VIDE) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on April 21, 2006, revised and resubmitted on May 2, 2006, and the additional submissions on June 1, 2006, June 30, 2006, and October 25, 2006. This conditional approval is also based upon VIDE's submissions on fiscal matters, including the submissions related to the third party fiduciary agreement intended to address Department-wide fiscal concerns. In its Part B application the Virgin Islands assures that it will:

1. Operate consistent with the Part B requirements of PL 108-446 and applicable regulations; and
2. Make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of Part B of the IDEA, as amended, as soon as possible, and not later than July 1, 2007. Section II of the State's application (which is incorporated by reference and enclosed with this grant letter) identifies the IDEA statutory sections for which the State needs to amend policies and procedures and the timelines by which the State will amend its policies and procedures in order to comply with Part B of the IDEA. Within Section II, the State has included the date by which it expects to complete necessary changes associated with any policies and procedures that are not yet in compliance with the requirements of Part B of the IDEA, as amended.

The Virgin Islands' FFY 2005 IDEA Part B grant award was released subject to Special Conditions identified in the U.S. Department of Education's September 26, 2005 letter to the Virgin Islands regarding the use of a third party fiduciary and subject to the programmatic Special Conditions attached to the October 21, 2005 Part B grant award letter for FFY 2005. Those Special Conditions required, in relevant part, that VIDE enter into a contract with a third party fiduciary agent to perform the financial management duties that are required under 34 CFR Parts 75, 76, and 80. VIDE reported that on August 25, 2006, it met this condition by entering into a contract with the firm of Alvarez and Marsal Public Sector Services LLC to function as a third party fiduciary agent as required in the Department's September 26, 2005 letter. On September 27, 2006, the Department imposed new Department-wide Special Conditions related to fiscal issues. These are attached as Enclosure D, and are incorporated herein by reference.

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The FFY 2005 programmatic Special Conditions imposed under Part B required that VIDE: (a) eliminate the backlog of students who have not received timely triennial evaluations, due after October 1999; (b) meet the early childhood transition requirements, that all eligible students transitioning from Part C to Part B have timely individualized education programs (IEPs) or individualized family service plans (IFSPs) and are receiving special education and related services by their third birthday, including those eligible children who turn three during the summer months; (c) ensure that children with disabilities participate in State and district-wide assessment systems with appropriate accommodations and alternate assessments where necessary and as indicated in their respective IEPs; (d) develop and administer alternate assessments; and (e) report publicly and to the Secretary on the participation and performance of children with disabilities in State and district-wide assessments, including alternate assessments. VIDE did not meet these Special Conditions. Specific summaries and analyses of VIDE's submissions under the FFY 2005 Special Conditions are set out in Enclosure D.

The Department is imposing programmatic Special Conditions on the State's FFY 2006 grant awards under Part B for the reasons detailed in Enclosure C. The Virgin Islands must administer these awards both in keeping with the applicable provisions of Federal law and regulations and with all the Special Conditions attached to this grant award document. Acceptance by the Virgin Islands of this grant award constitutes an agreement by the Virgin Islands to comply with these Special Conditions.

Enclosed is the grant award for funds currently available under the Department of Education FFY 2006 Appropriations Act for the Part B Section 611 (Grants to States) program. These funds are for use primarily in school year 2006-2007 and are available for obligation by States from July 1, 2006 through September 30, 2008.

Please note that as part of your Eligibility Documents for FFY 2006, the Virgin Islands has made an assurance, under 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. Any changes made by the State, after OSEP approval, to policies and procedures needed to comply with Part B of the IDEA, must meet the applicable public participation requirements, including those in 20 U.S.C. 1232d(b)(7).

Under the Section 611 formula, subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received from FFY 1999 funds, the general population in the age range for which each State ensures a free appropriate public education (FAPE) to all children with disabilities, and the number of children living in poverty in the age range for which each State ensures FAPE to all children with disabilities. Enclosure B provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure B shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations. Table II in Enclosure B shows your State-specific information for within-State distribution of 611 funds based on your State's application. If you disagree with the information in Enclosure B Table II, notify your State contact immediately.

Section 611(e)(1)(C) of the IDEA provides that "[p]rior to expenditure of funds under this paragraph [section 611(e)(1) concerning funds for State administration], the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current." We read this provision to mean that if a State does not have interagency agreements or other arrangements in place to establish responsibility for the

provision of services, the State may not expend funds available to the State under section 611(e)(1) [State administration funds] until the State has these agreements or arrangements in place.

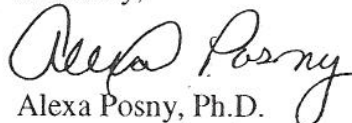
Under section 608(a) of the IDEA, each State that receives funds under Part B is required to inform in writing local educational agencies located in the State of any State-imposed rule, regulation, or policy that is not required by IDEA or Federal regulations (20 U.S.C. 1407(a)(2)). A State may use the same list of State-imposed rules, regulations and policies that it was required to submit to the Department in Section IV of its Part B application for this purpose.

The enclosed grant award for FFY 2006 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part B.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Section 606 provides that each recipient of assistance under IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities. Therefore, by accepting this grant a State is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,



Alexa Posny, Ph.D.

Director

Office of Special Education Programs

Enclosures

- Enclosure A
- Enclosure B
- Enclosure C
- Enclosure D

cc: Carrie Johns